NOMINATION—INTERSTATE COMMERCE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

NOMINATION OF

J. J. SIMMONS III, TO BE A MEMBER, INTERSTATE COMMERCE COMMISSION

FEBRUARY 26, 1982

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NOMINATION—INTERSTATE COMMERCE COMMISSION

FRIDAY, FEBRUARY 26, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:35 a.m., in room 235, Russell Senate Office Building, Hon. John C. Danforth presiding.

Senator DANFORTH. Today we have a confirmation hearing for Joesph Jacob Simmons who has been nominated by the President for membership on the Interstate Commerce Commission. He is being introduced today by Senator Boren.

It is my understanding that Mr. Simmons, although presently residing in New Jersey, is truly by origin in his heart an Okie.

We are pleased to have you with us, Senator Boren and Mr. Simmons. Please proceed.

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. We are very glad that the record will reflect that Mr. Simmons is truly an Oklahoman, but I was asked by Senator Bradley, who hopes that he might be with us later this morning to also pass on his very strong support for Mr. Simmons' nomination. He does now physically reside in the State of New Jersey as he serves currently as a vice president of Amerada Hess Corp.

Also, Senator Don Nickles of Oklahoma asked me to convey to you and the members of the committee his very strong support for the nomination. He had other responsibilities this morning back in Oklahoma and had to leave on an early flight. Otherwise he would have been here to express his support himself.

Senator DANFORTH. We will enter Senator Nickles' statement in the record.

[The statement follows:]

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Mr. Chairman and distinguished members of the Committee: I am very pleased today to recommend to you an outstanding businessman and enthusiastic public servant for appointment to the Interstate Commerce Commission, Mr. J. J. Simmons, III.

Although success and position have resettled Jake and his fine family near his office in New York City, Oklahoma is proud to claim him as a native. Born in Muskogee, Oklahoma, Jake has wasted no time in enthusiastically pursuing a successful career in the petroleum industry.

Educating himself through intensive training seminars as well as earning a traditional civil and geological engineering degree, Jake has gained respect as a knowledgeable and responsible leader in his field.

After earning his degree from the University of St. Louis in 1949, Jake went to work in Muskogee with the Simmons Royalty Company. Working his way up in the company, Jake took on growing responsibilities, serving during his tenure as Vice President, Secretary-Treasurer, and company geologist.

It was while in Muskogee that Jake began taking an active interest in local civic affairs.

By 1961, Jake Simmons' enthusiasm and expertise had brought him to Washington, D.C., where he served in the U.S. Department of the Interior in a number of petroleum-related capacities.

As Regional Defense Oil and Gas Specialist, Jake planned and directed the Emergency Preparedness and Mobilization of the petroleum and natural gas industry in a five-state area. Becoming Domestic Petroleum Production Specialist, he served as an advisor to the Secretary on all technical matters and policy decisions concerned with domestic oil and gas exploration, drilling, production, and conservation practices.

Becoming Assistant Director of the Office of Oil and Gas at DOI in 1966, Jake was the principal advisor and consultant to the Secretary and Assistant Secretary for Mineral Resources in the formulation of Federal policy as it relates to the adequacy and the proper development of domestic and foreign petroleum and natural gas resources.

As Deputy Administrator and later Administrator of the Oil Import Administration within Interior, Jake became the primary official charged with formulating and developing policy, rules, regulations, and procedures for the control of petroleum product imports into the United States and Puerto Rico; the licensing of importers of such imports and the allocations of amounts of such imports to the more than 200 refineries and petro-chemical plants, all in the interest of national security; and encouraging and promoting a healthy domestic petroleum industry. In addition, he served as Government Co-Chairman of the National Petroleum Council Committee, "Future Petroleum Provinces of the United States."

In 1970, Jake returned to the private sector where he has served until the present as Vice President for Government Relations and Assistant to the Chairman of the Board of the Amerada Hess Corporation.

In addition to his fine record in business, Jake has accumulated an impressive array of related industry publications and honors.

Mr. Chairman, I believe that this man would be a strong asset to this Administration and to the interests of our country. It is, therefore, with great pleasure and sincerity that I urge my colleagues to recommend favorably to the Senate the confirmation of Mr. J. J. Simmons, III, to be a member of the Interstate Commerce Commission.

Senator BOREN. It is a particular privilege for me to be able to introduce Mr. Simmons to this committee, because our friendship and acquaintance represents three generations of friendship and acquaintance between Mr. Simmons' family and my own. Our grandfathers were friends. In the early period of Oklahoma statehood his grandfather was a pioneer farmer and rancher in the Haskell, Okla., area. His father and my father were friends. His father is the late J. J. Simmons, Jr., one of the leading businessmen in our State. He operated a very active oil operation in our State, Exploration & Royalty, operating not only in the State of Oklahoma, but also on the African continent, with many business operations there. His father was the first of his race to be appointed to membership on the National Petroleum Council.

I also have a strong friendship with his brother Don, who served on my Judicial Nominating Commission recommending the appointment of Federal judges to me.

He is also presently a member of the National Petroleum Council and is an outstanding business leader in our State.

Our nominee this morning, as you have undoubtedly seen from his résumé, has indeed a distinguished career. He studied at the

University of Detroit, and, as the chairman already knows, is a graduate of St. Louis University, which undoubtedly adds strongly to his credentials before this committee this morning.

He is, as I have said, vice president of the Amerada Hess Corp. In that position he deals primarily with the impact of Federal, State, and local regulations on the operations of the company, and he is intimately familiar with the function of regulatory agencies and the process of regulation, which will be of great help to him as a member of the Interstate Commerce Commission.

From 1969 to 1970 he served as Administrator of the Oil Import Administration at the U.S. Department of the Interior, and earlier he served as Assistant Director of the Office of Oil and Gas of the Department of the Interior.

He has had several years of experience in the past with work in Federal agencies and work of a regulatory nature in the Federal Government.

He also has experience in private business. He was associated with his family in Muskogee, Okla., his hometown, in the Simmons Insurance Agency, a private insurance agency there. He also served as vice president of Simmons Royalty Co. during the time that he was living in Oklahoma and active in the family business.

His past service has been recognized with several distinguished service awards from the Department of Interior.

He serves on the board of trustees at Madonna College in Michigan. He is a member of many professional societies: American Association of Petroleum Geologists, Society of Petroleum Engineers, and others.

As I said, Mr. Chairman, I think he is exceptionally well qualified for this appointment, and I want to commend the President for making this nomination for action by the Senate.

He understands regulations; he understands the process. He has, as you can see from his record of accomplishment, a very keen intellect. He is a person who is not afraid to work hard.

As his record also demonstrates, and from my knowledge of him, he is a person of integrity, objectivity, and fairness. He possesses an ideal combination of qualities to commend him to this committee for confirmation to the position for which he is being considered.

I can only say again, Mr. Chairman, that, as you can see, it is a very special privilege for me to be a party to these proceedings and to be able to be here to present such a longtime friend to members of this committee and to you.

Senator DANFORTH. Senator Boren, thank you very much.

If you would like to stay there, come up here, leave or anything you want to do, that would be fine with me.

Senator BOREN. Thank you. I will remain for a while.

Senator DANFORTH. Mr. Simmons, do you have any comments you would like to make?

STATEMENT OF J. J. SIMMONS III

Mr. SIMMONS. Senator, I don't have any formal comments. I am grateful to Senator Boren for his kind comments concerning me.

I would like to express my appreciation to you and to the committee for considering me, and I assure you it is an honor for me to even be considered to come back into Federal service. I look back on my career, and some of the proudest moments I have ever felt in my life were in Federal service. There is no substitute for it. It is a feeling of pride that you can't find anyplace else.

Not only that, I feel as though there is a need for persons to come back into Federal service from both small business and corporate business. If our free enterprise system is to survive, I think more executives should make an effort to make the sacrifice to come back to Government to serve.

I thank you.

Senator DANFORTH. Thank you very much, Mr. Simmons.

Incidentally, and this is totally beside the point, but you were at St. Louis University between 1947 and 1949. Was that during the great basketball era?

Mr. SIMMONS. That was during the era of Easy Ed McCauley.

Senator DANFORTH. I saw Easy Ed in a elevator in St. Louis the week before last, and he is looking well.

You have had a career in businesses, large and small, as you have pointed out in your comments. How do you think that this background affects your approach to the ICC?

Mr. SIMMONS. Senator, after finishing St. Louis University I went home to engage in the family business. My dad was a drilling contractor, an oil producer, and I think we came into the drilling business almost by default, because up until the time that we acquired a drilling rig, and this was a very small operation, if there had been some stringent entry standards we possibly never would have been able to become drilling contractors. We were in a very risky business. We managed to survive. And I think all small businessmen should be given an opportunity to get a piece of the pie, and I certainly support this.

The 9 years that I spent in the Federal service certainly gave me an insight about regulation and Government regulation. A certain amount of it is absolutely necessary, especially as it relates to national security and emergency preparedness, which I am very sensitive to. In the corporate world, I certainly realize more than ever how much they in many instances have been strangled by regulation.

I guess when the President deregulated crude oil I would have thought a more gradual process would have been appropriate, and that could have been my exposure or my experience in the Federal sector. I thought maybe even a 2- or 3-year process would have been more appropriate. But he did it immediately, and it worked, and it was a thing that was really the best for our consuming public. As you will see, we have plenty of supply and the prices are showing signs of declining. So I think that all of these experiences, when considered all together, will certainly make me have an appreciation for the free enterprise system, which is composed of small business, and which is also composed of corporate business, and also the Federal regulatory process.

Senator DANFORTH. Would you consider yourself to be a regulator or a deregulator?

Mr. SIMMONS. Senator, I guess that's a question that has gotten a lot of people into trouble.

I would like to say that I certainly believe in the free enterprise system. There was a time, when I went to the corporate world—we eat lunch every day in the board room and continue to do business because Leon Hess doesn't want anybody to lose time on the job—I would hear the machinations every day about what the Government is doing to us. But I don't hear that anymore, because I have many times told them that if they were willing to come down and make the sacrifice and lend some of their mentality or experiences to the Federal Government maybe we wouldn't have these things.

I don't think I am a regulator or a deregulator, but I certainly believe in the free enterprise system and the minimum of regulation.

Senator DANFORTH. With respect to implementation of the Motor Carrier and Rail Deregulation Acts, would you consider yourself to be a regulator or a deregulator? Which direction do you think we should be moving in?

Mr. SIMMONS. Well, I certainly associate myself with, and will obey the policy as stressed in, the transportation policy that has been expressed in the code, and also the rail transportation policy, and I will certainly do everything I can to carry out the intent of Congress if I am confirmed. In these particular acts there is quite a bit of initiative that is left to the ICC in implementing its responsibility, and I think in order for motor carriers and railroads to survive in a healthy economic climate they certainly need to have a minimum of regulation.

Senator DANFORTH. Could you give the committee your views on the appropriate interpretation of fit, willing and able, and what the proper interpretation of fitness should be under the motor carrier entry policy?

Mr. SIMMONS. Senator, when I first saw that I had some very practical feelings about it. The only thing that I really understood was the "willing." I guess by the very fact that somebody spent their $350 to apply, well, that made him certainly willing. I am sure there are more serious connotations attached to fitness and ableness.

If I go back to my own experiences, if somebody had examined the fitness that we would have had to have to go into the oil business, I don't know, if they had erected some stringent financial barriers, I guess we never would have made it in the oil business.

I certainly do think whatever standards are erected for fitness and ability, and there are some that we certainly should consider as it relates to safety, even though that happens not to be the ICC's concern—I think it's with DOT—they certainly should be absolutely a minimum and everybody that wants to participate, as in this particular scheme of things, should be given an opportunity.

I'm certain fitness means financial responsibility and safety. As I said, the only thing I really understood was willingness.

Senator DANFORTH. Would it be fair to say that it would be your, at least preliminary, view that the ICC's proposed fitness standard, including the operational and financial as well as safety fitness, might be a little too stiff?

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Mr. SIMMONS. I guess it's a matter of interpretation. I would certainly hope that they would not be a barrier to someone that wants to participate in the transportation business.

Senator DANFORTH. In answer to written questions you stated that it was your view that in applying the Staggers Rail Act the intent of Congress should be carried out. What would you say is the intent of Congress underlying the Staggers Act?

Mr. SIMMONS. Well, as I understand it, sir, I think it's to permit railroads to improve their financial abilities. I think that was Congress intent, and I think they directed the ICC, under the Intertate Commerce Commission Act, to reduce Federal regulation wherever it is possible.

Senator DANFORTH. Do you have any ideas as to what areas the ICC should be examining in the reduction of regulation under the Staggers Act?

Mr. SIMMONS. Well, the act itself has given the ICC opportunity to exert its own initiative in this respect, and I think the relaxation as it relates to fresh fruits and vegetables is certainly in accord with the thinking of Congress, and I think if I am confirmed I will certainly look into every aspect to further minimizing regulation in that respect.

Senator DANFORTH. Senator Stevens.

Senator STEVENS. Thank you, Mr. Chairman.

I am a personal friend of J. J.'s. I just wanted to be here to listen to his presentation. I have no questions. I have every confidence in his ability and background and dedication, and I would be happy to see his nomination.

Senator DANFORTH. Mr. Simmons, thank you very much. I can say that you come here with glowing recommendations, not only on the record, which you have heard this morning, but off the record as well. Senator Boren and I were talking on the floor yesterday. I asked him about you, whether he knew you, and he said indeed he did, and had known you for a long period of time, and your family, and that he had the highest regard for you and thought that you were an excellent nominee. That is a very high recommendation indeed.

So we are delighted to have you here and very much appreciate your willingness to make what I am sure is a sacrifice on your part and be a part of Government service.

Mr. SIMMONS. Thank you very much, Mr. Chairman.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF JOSEPH JACOB SIMMONS III

Address: 1549 Ashbrook Drive, Scotch Plains, N.J. 07076.
Date and place of birth: March 26, 1925, Muskogee, Okla.
Marital status: Married to Bernice Miller Simmons.
Names and ages of children: Capt. Jacob Simmons, IV, 33; Mrs. Mary Agnes Brusick, 32; Mrs. Bernice Garza, 30; Ms. Jacolyn Simmons, 27; and Ms. Eva Simmons, 20.
Education.—
Name of school; location; dates attended; degrees:
Manual Training High School, Muskogee, Okla., 1939–1942.
University of Detroit, Detroit, Mich., 1942–1944.
University of Detroit, Detroit, Mich., 1946–1947.
St. Louis University, St. Louis, Mo., 1947–1949, B.S. Geological Engineering.

Employment record.—

1970–Present: Vice President, Government Relations, Amerada Hess Corporation, New York, N.Y.

1969–1970: Administrator, Oil Import Administration, U.S. Department of the Interior, Washington, D.C.

1966–1968: Assistant Director, Office of Oil & Gas, U.S. Department of the Interior, Washington, D.C.

1962–1966: Domestic Petroleum Production Specialist, Office of Oil & Gas, U.S. Department of the Interior, Washington, D.C.

1961–1962: Regional Oil & Gas Representative, Office of Oil & Gas, U.S. Department of the Interior, Battle Creek, Mich.

1949–1961: Secretary-Treasurer, Geologist, Simmons Royalty Company, Muskogee, Okla.

Memberships.—Professional: American Association of Petroleum Geologists; Society of Petroleum Engineers of the AIME; Petroleum Exploration Society of New York; and Registered Professional Engineer—State of Oklahoma.

Political affiliations and activities: During the last 10 years, I have made numerous personal contributions to committees to elect various Congressmen, Senators, and other persons.

Honors and awards: Special Act of Service Award, U.S. Department of the Interior—1963; Outstanding Performance Award, U.S. Department of the Interior—1968; Alumni Merit Award, St. Louis University, St, Louis Missouri—1968; and Distinguished Service Award, U.S. Department of the Interior—1970.

Published writings: "A Petrographic Study of Sediments from Excavations in St. Louis", St. Louis University Press, 1949; "Plain Facts About Oil", U.S. Department of the Interior, Government Printing Office, 1963; "Vulnerability of Natural Gas Utility Systems to Nuclear Attack", San Jose, California, U.S. Department of the Interior, 1967; and "Vulnerability of Natural Gas Utility Systems to Nuclear Attack", Albuquerque, New Mexico, U.S. Department of the Interior, 1968.

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question 1. Why do you think you are qualified to serve as an ICC Commissioner?

Answer. I believe that I am qualified to serve as a Commissioner because of my 12 years experience as a managing executive in a small independent oil producing company, my 9 years as a U.S. Government executive managing both a regulatory agency and a government industry liaison office, and my immediate past 11 years as a corporate executive in charge of Government Relations.

Question 2. have you had any contact with the Commission or the Department of Transportation while acting as government liaison for Amerada Hess? If so, what were the nature of those contacts?

Answer. I have not had any contact with the Interstate Commerce Commission or the Department of Transportation while acting as government liaison for Amerada Hess.

Question 3. Does Amerada Hess ship via any ICC-regulated carriers? If so, what products does it ship and is it generally pleased with the service it receives?

Answer. Amerada Hess ships via Interstate Commerce Commission regulated motor carriers and inland waterway barges transporting refined petroleum products such as residual fuel oil, No. 2 heating oil and gasoline. I presume that Amerada Hess is pleased with the service it receives.

Question 4. During Congressional consideration of the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980, did Amerada Hess have a position on this legislation? If so, what was that position and did you personally play a role in its formulation. Has that position changed since passage of the legislation? If the company took no position back in 1980, does it have a formal position now?

Answer. During Congressional consideration of the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980 Amerada Hess did not have a position on these bills, and it does not have a formal position now.

Question 5. You have indicated that while at the Oil Import Administration you were responsible for the licensing of importers, the allocation of imports to refineries and petrochemical plants, and the promotion of a healthy domestic petroleum industry. Are these responsibilities that you feel should be performed by the government or could they be performed as well or better by the marketplace?

Answer. Once the decision has been made by the President or the Congress that crude oil imports should be controlled, I believe that the responsibilities to allocate

imports to refineries and petrochemical plants should be performed by the government rather than by the marketplace.

Question 6. What are your views on government allocation of services among motor and rail carriers?

Answer. I am unclear as to the meaning of this question. However, I will assume that it concerns government contracting of transportation services to regulated carriers. I believe that in contracting for service, the government should, while seeking to obtain the most advantageous service available, also consider national transportation policy objectives. These include, for example, promoting minority participation in the motor carrier industry, and maintaining sound economic conditions among each mode.

Question 7. As an ICC Commissioner, what would you hope to accomplish?

Answer. I will seek to implement the provisions of the Interstate Commerce Act, consistent with the will of the Congress and in a manner which will assure the American public of a reliable and competitive surface transportation system.

Question 8. In view of the ICC's limited budget, the agency clearly must make the best use of the resources available to it. What do you see as the agency's top priorities? Are there any regulatory activities which the agency should not be involved in? If so, can the agency discontinue these activities on its own, or must Congress act to relieve it of such responsibilities?

Answer. In assessing the Commission's top priorities, I will be guided by the provisions of our national transportation policy. With respect to both rail and motor services, I believe that regulation is designed to foster reasonably priced, competitive and efficient services. To the extent that any agency regulations are not strictly required by legislation and do not clearly serve a public purpose, I will seek their elimination.

The agency may not, of course, discontinue activities which are mandated by statute. However, I believe the agency should constantly monitor the impact of its activities on the public, keep the Congress apprised of its findings, and, where necessary, recommend legislative changes.

Question 9. One of the goals of the Staggers Rail Act was to permit railroads to improve their financial viability. What do you believe the ICC is doing or should be doing to help ensure that this goals is met?

Answer. The Interstate Commerce Commission should, consistent with the provisions of the Staggers Rail Act, afford the railroads greater lattitude in excerising marketplace initiatives.

Railroads must be afforded the clear opportunity to attract and maintain capital and to receive a reasonable return on investment. These objectives can be accomplished, in part, by streamlininig existing regulations which serve to impede management prerogatives.

Question 10. A second goal of the Staggers Rail Act was to reduce Federal regulation and permit the marketplace to regulate rail service wherever possible. What do you think the ICC is doing or should be doing to implement this goal?

Answer. The Commission has already taken steps to streamline various rail related regulations. Cumbersome reporting requirements have been eliminated and, also, decisions are being issued expeditiously. Many regulatory activities have been modified as a direct consequence of provisions in the Staggers Rail Act.

The Commission, however, should also continue to exercise its broad rail exemption authority whenever appropriate. The exemption tool can prove useful not only with respect to individual proceedings, but also in broad areas of transportation activity. The Commission should continue to seek areas in which regulation may not be achieving a valid public purpose.

Question 11. The Staggers Rail Act also gave the ICC broad flexibility to make changes in areas of regulation not specified in the act. What areas do you think the ICC should explore to further relieve the railroad industry from economic regulation?

Answer. In my prior response, I alluded to the need for monitoring continuously rail activities to determine where the marketplace might be a more suitable alternative to regulation. I cannot identify any area of regulation as being ripe for exemption until I have had a full opportunity to examine the current regulatory scheme. In making my investigation, however, I intend to consider all possibilities and to consider the views of members of industry and shipping public.

Question 12. Under what circumstances, if any, do you believe railroads should be required to continue to operate low-density rail lines that show little or no signs of becoming financially self-sufficient? What alternatives would you suggest for shippers on such lines?

Answer. As a general principles, railroads should not be required to operate branch lines which are demonstrated not to be financially self-sufficient. The Staggers Rail Act provides for expedited abandonment procedures in such instances. At the same time, the act includes financial assistance provisions which allow concerned members of the public an opportunity to maintain service on such lines either through purchase or subsidization procedures. Provisions have also been established to facilitate motor carrier entry into communities which previously relied upon rail service.

In implementing the applicable statutes, the Commission should strive to enable shippers and rail carriers to reach an accord in financial assistance cases. Where this is not possible, the Commission should seek to promote alternative services (for example, motor or intermodal) in affected communities.

Question 13. Merger activity is prevalent in the railroad industry today. Such activity has the potential to both increase operating efficiencies and to decrease competition. What is your position on railroad consolidation?

Answer. Rail mergers must be considered individually in light of their impact upon competition as well as the enhanced efficiencies to be derived by the merged entities. The impact of a given merger upon other railroad services and the communities they serve cannot be overlooked and should be studied carefully. To the extent that merger activity enhances the financial posture of the industry without adversely impacting upon the public it should be encouraged.

Question 14. Would you like to see changes in the regulation of the intercity bus industry, and if so, to what extent?

Answer. In enacting the Motor Carrier Act of 1980, the Congress relaxed entry standards for motor carriers of property. Previously, entry criteria for carriers of property and passengers were identical. Currently, bus legislation is pending before the Congress.

I believe that there is a need to further promote competition in the bus area through relaxed entry standards. I support legislative efforts which would relax such standards at least to the extent now governing motor carriers of property.

Question 15. There is a fear among those concerned with rural areas, that by deregulating the bus industry many communities will lose their only means of transportation. Do you see this as a problem?

Answer. I understand that this question, which warrants particular concern, has been the subject of a study prepared by the Commission. I intend to examine carefully the findings contained in this report. In any event, it is my intention to carry out fully the provisions of the existing bus legislation and that which is ultimately adopted by the Congress.

Additionally, I will encourage the Commission to continue monitoring the impact of intercity bus service regulation and to keep the Congress apprised of its findings.

Question 16. During consideration of the Motor Carrier Act, members of this committee made it clear that it was not necessary for an applicant for motor carrier authority to produce statements of shipper support in order to demonstrate the public's interest in its proposed service. Further, it was said that support by public officials, consumers, and other non-shipper entities was sufficient to demonstrate public interest. How do you view any effort on the part of the Commission to limit non-shipper forms of support for motor carrier applications?

Answer. I interpret the motor carrier legislation as clearly permitting the demonstration of public interest in a proposed service by means other than supporting shipper statements. For example, an application could be premised upon any of the criteria set forth in the national transportation policy. Such factors, including enhanced competition and efficiencies, intermodalism, promotion of minority participation and increased service to small communities clearly may be shown through means other than a supporting shipper's testimony.

I am not personally aware of whether or to what extent the Commission has placed limitations on acceptable supporting evidence. However, I intend to implement the will of the Congress in deciding motor carrier cases.

Question 17. The Motor Carrier Act of 1980 eased entry standards for motor carriers of freight. (a) What is your regulatory philosophy regarding entry into the motor carrier freight business? (b) In your mind, has the current Interstate Commerce Commission been too restrictive, too liberal or just right in its interpretation of motor carrier entry policy?

Answer. I believe that regulation is designed to ensure that reliable transportation services are readily available to the public at a reasonable price. When motor carrier legislation was initially adopted in 1935, anticompetitive practices gave rise to a very real need for government intervention in the industry. Unsafe operations, cutthroat pricing and so-called fly-by-night operations were very common. Over the

years, however, the industry has stablized, and a far lesser need for government protectionism exists.

This transition is clearly reflected in the 1980 motor carrier legislation which provides both for relaxed entry standards and greater ratemaking flexibility. I believe that the trend in favor of reduced Federal intervention and greater reliance on the marketplace is one worth pursuing.

I am aware that Commission actions in implementing the motor entry legislation have been a matter of controversy and that a defference of opinion exists between members of the industry, shippers and other members of the public. Also, aspects of the Commission's implementation efforts have recently become the subject of judicial review. I will be best able to determine whether the Commission's implemental efforts have been appropriate or otherwise once I assume my position and become involved. I can assure you that I will carry out the intent of Congress as set forth in the Motor Carrier Act of 1980.

Question 18. The Interstate Commerce Commission has recommended to Congress elimination of that part of entry policy which requires a showing of "public need" for transportation services. A carrier seeking expanded or new authority to operate would be required to show that it is "fit, willing, and able" to operate. (a) What is your view of this recommendation? (b) How would you define "fit, willing and able"?

Answer. The initial determination of whether the public need criterion should be eliminated should be made in light of a thorough examination of the current regulatory scheme. If it is determined by the Congress that this criterion had been to some extent a superficial barrier to entry it should be eliminated. Assuming that I am confirmed as a Commissioner, I intend to examine the impact of entry regulation with an eye towards determining whether the legislative goals of the Interstate Commerce Act are being achieved.

With respect to fitness, I believe that there is a need to ensure that the public has reliable transportation services available. Carrier fitness is now and should continue to be a criterion to ensure that safe operations are conducted. However, in weighing other aspects of fitness, for example, financial fitness), the Commission should be careful to provide carriers, particularly new applicants, a real opportunity to establish and expand their operations.

Defining specifically the phrase "fit, willing and able" is no easy task, as the determination of a particular carrier's fitness may reflect a host of factors unique to that carrier. Generally, however, I believe the term fitness embraces such factors as a carrier's ability to provide safe operations and to conform its operations to the law. I believe "willingness" is reflected in a carrier's filing of an application, a clear indication of its desire to engage in motor carrier operations. The "ability" of a carrier to operate is, in the case of an existing concern, often reflected in its past operations. A new carrier should demonstrate a sufficient familiarity with the operational and legal aspects of the venture sought to be undertaken.

Under no circumstances, however, should a fitness test be employed so as to create a greater obstacle to entry than currently exists under the legislation.

Question 19. There are several bills in Congress to grant rights of way across railroad land to companies wishing to build coal slurry pipelines. (a) What is your view of such Federal legislation? (b) In the bills being discussed authority to grant rights of eminent domain are vested in either the Interstate Commerce Commission or the Federal Energy Regulatory Commission. Which agency should such power be vested in?

Answer. I have not had an opportunity to examine this question in depth. I am aware that major concerns exist over the impact of such legislation upon States' rights, the vitality of the railroad industry, and competition for energy resources generally.

Until such time as I have studied these questions in detail, as well as the related regulatory responsibilities now vested in the Commission and FERC, I respectfully prefer not to recommend which agency should have the authority to grant rights or eminent domain.

Questions of the Minority and the Answers Thereto

Question 1. What specific transportation experience would you bring to the position of ICC Commissioner? What would you hope to accomplish in this position?

Answer. While I have not been directly involved in transportation regulation, I believe that I an well equipped to assume the duties of Commissioner by virtue of my career experience in industry and government. Specifically, I have 12 years experience as a managing executive in a small independent oil producing company, 9

years as a U.S. Government executive managing both a regulatory agency and a government industry liaison office, and, most recently, 11 years as a corporate executive in charge of Government Relations.

If I am confirmed as a Commissioner, I will seek to achieve the regulatory goals of the Congress through a full and proper implementation of the Interstate Commerce Act. In so doing, I will be guided by the national transportation policy which is designed to ensure the American public of an efficient and reliable surface transportation system.

Question 2. How would you characterize your regulatory philosophy? How would you seek to carry out this philosophy if confirmed as Commissioner? In this regard, how do you view the future role of the Commission in promoting the regulatory reform efforts of Congress? Are there directions in which you believe the Commission should be moving?

Answer. I believe that a sound transportation system can best be achieved through the promotion of marketplace principles. To the extent that government regulation exists, we must be careful that it is fulfilling a public need.

The Congress recently enacted legislation in the motor and rail industries designed in each instance to relax regulation and to encourage competition and private initiatives. I intend to administer my duties in strict compliance with the provisions of this legislation, which I fully support.

It is the Commission's duty to implement the will of the Congress and to monitor continuously the impact of its regulatory activities. The Commission's current actions should be designed to enhance competition and efficiency in the transportation industry and, where appropriate, to suggest to the Congress additional legislative actions.

Question 3. What priorities do you believe the Commission should be establishing in the area of transportation regulation? Are there specific issues which you believe should be addressed by the Commission with respect to the various modes? Are there areas in which the Commission should become more involved or less involved?

Answer. In establishing priorities, the Commission should be guided by the national transportation policy. In the motor carrier area, this means promoting competition, and encouraging broader and more responsive service proposals by new and existing carriers. In the rail area, the Commission should reexamine regulations which unnecessarily impede management initiatives. The Commission should work expeditiously to decide rail issues in accordance with the substantive provisions and time frames established by the Staggers Rail Act. Particular concern should be placed upon establishing rate guidelines for the movement of coal; the use of the Commission's exemption authority; and encouraging intermodalism.

A major priority for the Commission, particularly in view of its limited resources, is to examine its regulations to determine which are ineffective or unwarranted. To the extent that regulatory activities are required by statute but no longer appear meaningful, the Commission should recommend legislative action to the Congress. Areas in which the Commission's role is somewhat limited, or perhaps duplicative of other agency activities warrant examination. These may include jurisdiction over securities issuances, water carrier licencing, and broker activities.

Question 4. The Commission has an important responsibility to implement the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980. How do you perceive the intent of Congress in the passage of this legislation? If confirmed as Commissioner, what affirmative steps would you take to ensure that the intent of Congress is being carried out?

Answer. With respect to both modes, Congress clearly intended to relax government regulation. In the motor carrier area, Congress intended to promote competition and to encourage carriers to provide more innovative and responsive services to the public. This is made possible by affording carriers broader opportunities to compete for traffic, and also more ratemaking flexibility.

I believe Congress intended to permit railroads to improve their financial viability by railroads' exercising greater control over their business practices. Thus, among other things, the legislation provides railroads with greater ratemaking flexibility, and requires the Commission to decide cases within strict time frames. As a Commissioner, I will strive to implement the legislation in accord with the Congressional intent.

Question 5. Much attention has been focused on the Commission's current implementation of the Motor Carrier Act. Specifically, Members of this committee have raised concerns about certain Commission actions having the effect of restricting entry, which is clearly contrary to the committee's express commitment to freer entry. What is your position on this issue? How do you perceive the direction in which the Commission has been, or should be, moving in the area of entry?

Answer. Clearly, the legislation is designed to promote competition through a relaxation of motor carrier entry requirements. Accordingly, the Commission should be promoting competition by authorizing broad, varied and responsive services. I fully support the goals of the Congress and intent to implement the provisions of the legislation fully in accordance with the national transportation policy. Since I have not been intimately involved with the inner workings of the Commission, I have not had a first hand opportunity to come to an informed judgement as to the current direction of the Commission. I read in the press, however, that some groups believe the Commission has moved too slowly and other groups contend the Commission has moved well beyond the intent of the legislation. I can assure you that I am committed to the goals expressed in the national transportation policy.

Question 6. Specific concern has been raised about the Commission seeming to require that shipper support be shown for every aspect of an application for motor carrier authority, a requirement which is clearly contrary to Congressional intent. What is your view of the Commission's actions in this regard?

Answer. The legislation clearly does not require supporting evidence in licensing cases to consist strictly of supporting shipper testimony. An application may be premised on any number of factors including those specifically enunciated in the national transportation policy. Evidence of enhanced competition and operating efficiencies could well be furnished by non-shipper witnesses and/or statistical data. I am not personally aware of whether or to what extent the Commission may be limiting evidentiary showings. However, I intend to decide cases in accordance with the clear mandate of the statute.

Question 7. How do you view the impact of the Motor Carrier Act on small shippers and small communities? Are there actions which the Commission should be taking in this regard?

Answer. The maintenance of service to small shippers and small communities is expressly cited as a goal of our national transportation policy. To my knowledge, the new legislation has not resulted in any qualitative or quantitative diminution of service to small shippers and communities. I understand that this question is a matter of an ongoing study by the Commission. I would encourage a continuation of such efforts to determine whether and to what extent such services could be improved through the Commission's activities.

Question 8. Concerns have been raised that the Commission has been slow to implement the Staggers Act. What is your reaction to this concern, in light of the ongoing rulemakings at the Commission pursuant to this legislation? Are there other actions which the Commission should be taking to further promote this act?

Answer. Implementing the Staggers Rail Act appropriately and expeditiously is clearly a fundamental responsibility of the Commission. If I am confirmed, I will investigate the Commission's progress in meeting this obligation. In so doing, I will encourage prompt compliance with all of the act's provisions, while simultaneously ensuring that interested members of the public are afforded a full opportunity to participate in the process.

Question 9. During the Congressional deliberations on the Staggers Act, much attention was focused on the rates associated with the movement of coal. What is your philosophy with respect to coal rates? Are you satisfied with the Commission's actions in this area?

Answer. I believe the railroads must be afforded an opportunity to achieve revenue adequacy with respect to rates on coal. Moreover, the rates should reflect a rate of return which will ensure the railroads' future ability to provide an increasingly important service. However, the rates must also reflect the needs of consumers to obtain energy resources at a reasonable cost.

The Commission has a clear and significant role to play in this area. I understand that a proceeding which will establish coal rate guidelines has been pending for some time before the Commission. I believe that the Commission should issue a decision establishing guidelines for determining the reasonableness of rates as soon as possible. Similarly, the Commission should move expeditiously on the question of whether to exempt rates on export coal movements from regulation.

Question 10. What is your view of the common carrier obligation? How do you perceive the Commission's role in defining this obligation under the Rail and Motor Carrier Acts?

Answer. I have been informed that the scope of a motor carrier's common carrier obligation is at issue in a proceeding currently pending before the Commission. Among the salient questions being considered is whether something other than a carrier's certificate should define the scope of its obligation to provide service.

Because I may participate in this proceeding, I prefer not to comment on the merits of the questions involved. However, in reaching a decision, I will certainly

consider the issues in light of the statutes governing motor carrier entry and service obligations.

The Commission must ensure that shippers using rail and motor services receive service in a fair, non-discriminatory manner. On the rail side, this means ensuring that available equipment is furnished to shippers upon request and that service is provided at reasonable rates. The Staggers Rail Act, however, does permit and encourage rail carriers to provide service under contract with individual shippers. I understand the Commission employs a "contract advisory service" to enhance the public's understanding in this area.

Question 11. In recent months, the Commission has indicated a need to increase its enforcement efforts. How do you view the Commission's role in this area? Are increased enforcement efforts necessary?

Answer. The extent of the Commission's role in this, as in all, regulatory areas must be developed in accordance with legislative goals, and as a practical matter, its available resources. Whether there exists today a greater need for enforcement activity is a question I will address should I be confirmed. Presently, I have no specific evidence either in support of or opposition to this view.

Question 12. A principal focus of all regulatory reform efforts has been procedural reform, namely reduction in unnecessary delays and procedures. Have the Commission's activities been adequate in this area?

Answer. I understand that the Commission has already taken significant steps to reform its regulatory activities, and that its efforts are continuing. I fully support these efforts and intend to place a high priority upon eliminating procedures which do not serve a public purpose but only place an undue burden upon members of the industry.

Question 13. Shippers and private investors have spent a fortune building and acquiring railroad cars as a result of the railroad's defaulting through the 1970's in supplying cars for the shipment of grain and fertilizer. Presently, to the surprise and consternation of shippers, railroads throughout the country have adopted wholesale restrictions on utilization of shipper-owned cars, despite the Staggers Act mandates which require rules be implemented for the fair operation of the market system. Would you not agree that this is an area for prompt action for the ICC?

Answer. While I am not familiar with all of the issues raised by this problem, I would agree that it is a matter of concern and deserves attention. I understand that the ICC has recently acted upon a petition which addresses this complaint and since the possibility of an appeal to that decision still exists, and might therefore appear before me should I be confirmed, I don't feel that I should comment, at this time, on the merits of the issue.

Senator DANFORTH. Senator Boren, thank you.

[Whereupon at 9:54 a.m. the hearing was adjourned.]

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